

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of August 7, 2000, by and among ATMOS ENERGY CORPORATION, a Texas and Virginia corporation ("Atmos"), ATMOS ENERGY MARKETING, LLC, a Delaware limited liability company ("Energy"), WOODWARD MARKETING, INC., a Texas corporation ("WMI"), J.D. Woodward, III, an individual, and Linda Lee Woodward, an individual (collectively, "Woodward"), and James Kifer, an individual, and Rita B. Kifer, an individual (collectively, "Kifer").

WHEREAS, WMI owns 55% and Energy owns 45%, respectively, of the membership interests of Woodward Marketing, L.L.C., a Delaware limited liability company (the "LLC");

WHEREAS, the boards of directors of Atmos and WMI, the stockholders of WMI and the managers of Energy have determined that it is in the best interests of their respective companies, stockholders and owner, to effect the sale of substantially all of the assets of WMI to Energy and to consummate the transactions contemplated hereby upon the terms and subject to the conditions set forth herein;

WHEREAS, in connection with the sale of substantially all of its assets, WMI has adopted a plan of complete liquidation and dissolution;

WHEREAS, for federal income tax purposes, it is intended that the sale of assets contemplated hereby, together with such liquidation, will constitute a "reorganization" under Section 368(a) of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, Atmos, Energy, WMI, Woodward and Kifer hereby agree as follows:

A. On the basis of the representations, warranties, covenants and agreements set forth herein, and subject to the terms and conditions set forth herein, at the Closing, WMI shall sell, convey, assign, transfer, and deliver to Energy, and Energy shall purchase and acquire from WMI, all of WMI's assets, franchises, interests, properties, and rights and privileges of every kind and description, real, personal or mixed, tangible or intangible, including all right, title and interest of WMI therein and thereto as all of the foregoing exist immediately prior to the Closing (collectively, exclusive of the Excluded Assets, the "Acquired Assets"), constituting the following:

(i) All of the LLC Membership Interests owned by WMI and all rights and benefits of WMI under the LLC Documents attributable to the period after the Closing; and

(ii) 345,500 shares of Common Stock, no par value, of Atmos ("Common Stock").

Notwithstanding the foregoing, WMI shall retain all of its other assets, including all cash and cash equivalents, all accounts receivable, all notes receivable from Woodward and Kifer, all life insurance policies, all rights to distributions from the LLC contemplated by Section 7.2, all books and records of WMI not related to the LLC, all rights under this Agreement and the

Ancillary Agreements and all rights and benefits under the LLC Documents that, under the terms of the LLC Documents, expressly survive the time when WMI is no longer an owner of LLC Membership Interests or are attributable to the period prior to the Closing (collectively, the "Excluded Assets").

B. As full payment for the Acquired Assets, WMI will receive the following consideration (the "Purchase Consideration"): (i) 960,000 shares of Common Stock, based upon a value of \$24,000,000 at \$25.00 per share (the "Base Shares"), (ii) 345,500 shares of Common Stock (the "Included Shares") and (iii) 463,193 shares of Common Stock, based on the Trading Value of the Common Stock as of the date hereof (the "Cumulative Shares").

C. The portion of the Purchase Consideration constituting the Base Shares shall be subject to adjustment in the circumstances, and to the extent, provided in this Section C, and subject to Section E below. If between the first anniversary of the Closing Date and the Date of Determination, the Closing Price for the Common Stock for each trading day in any period of thirty (30) consecutive days shall have been at least \$25.00, no additional consideration shall be payable. If as of the Date of Determination there shall not have been any such period in which the Closing Price shall have been at least \$25.00, additional consideration (the "True-up Consideration") shall be payable in respect of the Base Shares issued at the Closing Date. For each Base Share, the True-up Consideration shall be the amount by which the Trading Value as of the Date of Determination is less than \$25.00. Any True-up Consideration required to be paid by this Section C shall be paid in shares of Common Stock, valued at the Trading Value as of the Date of Determination, no later than three (3) business days after the Date of Determination.

D. If any True-up Consideration is required to be delivered pursuant to Section C above, WMI shall also receive an amount (the "Dividend Adjustment") equal to the aggregate amount of dividends and other distributions that would have been received from the Closing Date to the Date of Determination (the "Missed Dividends") on or in respect of the number of shares of Common Stock to be delivered as True-up Consideration. To the extent the Missed Dividends are comprised of cash, the Dividend Adjustment shall be paid in shares of Common Stock, valued at the Trading Value as of the Date of Determination, not later than three (3) business days after the Date of Determination. To the extent the Missed Dividends are comprised of Common Stock, the Dividend Adjustment shall be paid in an equal number of shares of Common Stock.

E. Notwithstanding Section C above, the aggregate number of shares of Common Stock delivered under Section C above shall not exceed 232,547 shares.

F. For purposes of the foregoing:

(i) The term "Date of Determination" shall mean the earlier of (A) the fifth anniversary of the Closing Date or (B) the date of a Change in Control.

(ii) The term "Trading Value" shall mean, for any date, the average Closing Price for the Common Stock for the ten (10) then most recent trading days ending on the second trading day prior to such date.

(iii) The term "Closing Price" shall mean, for any trading day, the closing price for the Common Stock as reported for New York Stock Exchange Composite Transactions or, if the Common Stock is not listed on the New York Stock Exchange, as reported for the principal exchange or system on which such shares are listed or traded.

(iv) The number, kind and value of shares or other consideration so issuable, and determinations of prices associated therewith, shall be subject to such customary anti-dilution adjustments as shall be determined in good faith by Atmos to reflect any stock splits, reverse stock splits, stock dividends, reclassifications, recapitalizations, mergers, consolidations or other changes in capital structure occurring or for which a record date occurs after the date hereof.

(v) No certificates representing fractional shares of Common Stock will be issued as a result of the transactions contemplated hereby. If WMI would otherwise have been entitled to receive a fraction of a share of Common Stock, WMI shall receive, in lieu thereof, additional Common Stock in order to round up to the next whole share the Common Stock it is otherwise entitled to receive.

G. At the Closing, Energy shall assume the executory obligations of WMI under (i) the LLC Documents relating to the period beginning immediately after the Closing Date and (ii) the Bank of America Facility (the "Assumed Obligations"). Notwithstanding any other provisions hereof or any doctrine of law, except for Assumed Obligations, WMI shall retain and Energy shall not assume or agree to pay, perform, or discharge, any liabilities or obligations of WMI, whether known or unknown, accrued or contingent or otherwise, including (i) any liabilities or obligations that WMI owes to any Affiliate, (ii) any liabilities or obligations that relate to the Excluded Assets, (iii) any obligations or liabilities to employees, whether for compensation, under any Employee Benefit Arrangement or by applicable law, rule or regulation, (iv) any liabilities or obligations with respect to any Environmental Requirements or Hazardous Materials, (v) any liabilities for any pending or threatened claims, actions, suits, investigations or proceedings, or (vi) any Taxes (collectively, the "Retained Liabilities").

H. The parties acknowledge that, as the owners of WMI, Woodward and Kifer will receive consideration for their obligations hereunder as a result of the consideration to be delivered to WMI hereunder.

## **ARTICLE I. REPRESENTATIONS AND WARRANTIES OF WMI, WOODWARD AND KIFER**

WMI, Woodward and Kifer, jointly and severally, hereby represent and warrant to Atmos and Energy that the statements set forth in this Article I are true, correct and complete, except as set forth in the WMI Disclosure Schedule attached hereto as Exhibit A.

### **SECTION 1.1. *Organization and Qualification.***

(a) WMI is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas. The LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of WMI and the LLC has all requisite corporate or limited liability company power and authority and possesses

all franchises, grants, authorizations, licenses, permits, easements, consents, certificates, approvals and orders ("Governmental Authorizations") necessary to own, lease and operate its properties and assets and to carry on its business as it is presently conducted, except where the failure to have any of such Governmental Authorizations would not reasonably be expected to have a Material Adverse Effect on WMI or the LLC. Each of WMI and the LLC is duly qualified as a foreign corporation and limited liability company, respectively, to do business and is in good standing in the State of Texas and each jurisdiction in which the character of the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect on WMI or the LLC.

(b) WMI has not been a subsidiary or division of another corporation or entity at any time during the two-year period prior to the date of this Agreement.

(c) WMI has heretofore delivered to Atmos and Energy true and complete copies of WMI's Articles of Incorporation and Bylaws, including all amendments thereto, and the LLC Documents, including all amendments thereto.

SECTION 1.2. *Subsidiaries.* Other than its 55% ownership interest in the LLC and 345,500 shares of Common Stock, WMI does not own, directly or indirectly, any equity or similar interest in any corporation, partnership, limited liability company, joint venture or other business association or entity. The entire ownership interest in the LLC consists of 100 Units of LLC Membership Interests, all of which are issued and outstanding. All of such ownership interest is duly authorized, validly issued, fully paid and, except as provided in the LLC Documents, non-assessable and free of preemptive rights. WMI and Energy are the only members of the LLC, and no other person or entity owns or has the right to acquire any ownership interest in the LLC by, through or under WMI. Except as provided in the LLC Documents, there are no options, warrants, or other rights, agreements, arrangements, or commitments of any character relating to WMI's ownership interest in the LLC or obligating the LLC to issue or sell any such ownership interest, or any securities convertible into or evidencing the right to purchase any such ownership interest or other equity interests in the LLC. There are no obligations, contingent or otherwise, of the LLC to repurchase, redeem or otherwise acquire any of its ownership interest except as provided in the LLC Documents.

SECTION 1.3. *Capitalization.* The entire authorized capital stock of WMI consists of 100,000 shares, par value \$0.01 per share, of common stock (the "WMI Stock"), of which 1,695 shares of WMI Stock are issued and outstanding.

SECTION 1.4. *Authority Relative to this Agreement.* WMI has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a signatory, and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which WMI is a signatory have been duly and validly authorized by WMI's board of directors and stockholders, and no other corporate proceedings on the part of WMI are necessary to authorize this Agreement or the Ancillary Agreements to which WMI is a signatory or to consummate the transactions contemplated herein and therein. This Agreement has been, and the Ancillary Agreements to which they are

signatories will be, duly and validly executed and delivered by WMI and, assuming that this Agrément constitutes, and the Ancillary Agreements to which they are signatories will constitute when signed, the legal, valid and binding obligations of the other parties hereto and thereto, each such agreement constitutes or will constitute the legal, valid and binding obligation of WMI, enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws (including court decisions) and doctrines affecting the rights of creditors generally and general equitable principles.

#### SECTION 1.5. *No Conflicts.*

(a) Except as set forth in the WMI Disclosure Schedule, the execution, delivery and performance of this Agreement and the Ancillary Agreements to which WMI is a signatory by WMI and the consummation by WMI of the transactions contemplated hereby and thereby do not and will not conflict with or constitute a breach or violation of or default under, or trigger any payment or other material obligations pursuant to, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of WMI or the LLC pursuant to, any contract, indenture, mortgage, loan agreement, note, license, franchise, permit, lease or other instrument to which WMI or the LLC is a party or by which either of them is or may be bound or to which any of their respective properties or assets is subject, nor will such action result in any breach or violation of, or default under, the provisions of the Articles of Incorporation or Bylaws of WMI or the LLC Documents or of any applicable law, administrative regulation or administrative or court decree.

(b) Except as set forth in the WMI Disclosure Schedule, the execution, delivery and performance of this Agreement and the Ancillary Agreements to which they are signatories by Woodward and Kifer and the consummation by Woodward and Kifer of the transactions contemplated hereby and thereby do not and will not conflict with or constitute a breach or violation of or a default under, any contract, indenture, mortgage, loan agreement, note or other instrument to which Woodward or Kifer is a party or by which either of them is or may be bound, nor will such action result in any breach or violation of, or default under any applicable law, administrative regulation or administrative or court decree.

SECTION 1.6. *Required Filings and Consents.* No authorization, approval or consent of, or registration or filing with, any Person is required for the execution, delivery or performance by WMI, Woodward or Kifer of this Agreement or the Ancillary Agreements to which they are signatories or the consummation by WMI, Woodward or Kifer of the transactions contemplated herein and therein, except (i) the applicable requirements of federal and state securities laws, (ii) the filing requirements under the Hart-Scott-Rodino Act and (iii) the consents of those Persons listed in Section 1.6 of the WMI Disclosure Schedule.

SECTION 1.7. *Compliance.* Neither WMI nor the LLC is in breach, default or violation of, and no event has occurred or is occurring that with notice or lapse of time or both would become a breach, default or violation of (i) WMI's Articles of Incorporation or Bylaws or the LLC Documents, (ii) any law, rule, regulation, order, judgment or decree applicable to WMI or the LLC or by which WMI or the LLC or any of their respective properties is bound or affected, or (iii) any material contract, indenture, mortgage, loan agreement, note, license, franchise, permit, lease or other instrument to which WMI or the LLC is a party or by which either of them

is or may be bound or to which any of their respective property or assets is subject, nor has WMI or the LLC received and not finally resolved any written notice of a breach, default or violation of any of the foregoing nor, to the best of WMI's Knowledge, are any threatened, except for any such breaches, defaults or violations that would not reasonably be expected to have a Material Adverse Effect on WMI or the LLC.

SECTION 1.8. *Contracts.* The WMI Disclosure Schedule contains a list of all material contracts, including without limitation, gas purchase agreements, gas sales agreements, pipeline transportation agreements, loan agreements, natural gas hedging, trading and gas commodity futures, options and swap agreements, indentures, commitments, indemnities and other material agreements or arrangements to which WMI or the LLC is a party or by which WMI or the LLC or any of their respective properties is bound as of the date of this Agreement. All such contracts and instruments have been duly and validly authorized, executed and delivered by WMI or the LLC, are in full force and effect and neither WMI nor the LLC are in breach or default of any obligation, agreement, covenant or condition contained in any such contract or instrument, other than breaches or defaults which, singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on WMI or the LLC; none of such contracts or instruments has been assigned by WMI or the LLC and neither WMI nor the LLC has received written notice of any present condition or fact which would prevent compliance by WMI or the LLC with the terms of any such contract or instrument in all material respects; and neither WMI nor the LLC has received written notice that any other party to any such contract or instrument has any intention not to render full performance in all material respects as contemplated by the terms thereof.

SECTION 1.9. *Financial Statements.*

(a) WMI has heretofore delivered to Atmos and Energy the unaudited financial statements of WMI and the audited financial statements of the LLC for the fiscal years ended December 31, 1998 and 1999 and the unaudited financial statements of WMI and the LLC for the four month period ended April 30, 2000 attached hereto as Schedule 1.9(a) (collectively, the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby and fairly present in all material respects the financial condition, results of operations and cash flows, as the case may be, of WMI and the LLC as of and for the respective dates or periods indicated, except in the case of interim statements, for the omission of note disclosure and normal year end adjustments not expected to be material in amount.

(b) Since December 31, 1999, and except as contemplated by this Agreement or described in the WMI Disclosure Schedule, (i) WMI and the LLC have conducted their business only in the ordinary course of business and have taken no action of the type referred to in Section 4.1, (ii) to the Knowledge of WMI, there has been no Material Adverse Effect on WMI or the LLC, whether or not arising in the ordinary course of business, (iii) there have been no transactions, agreements or arrangements entered into by WMI or the LLC, other than those in the ordinary course of business, which are material with respect to WMI or the LLC and (iv) there has been no dividend or distribution of any kind declared, paid or made by WMI on its capital stock.

(c) Neither WMI nor the LLC has any liabilities or obligations (whether accrued, absolute, contingent, known or otherwise) that are material in amount, whether individually or in the aggregate, except for liabilities and obligations that (i) are accrued or reserved against in the balance sheets of WMI and the LLC as of April 30, 2000 included in the Financial Statements, or disclosed in the notes to the balance sheets of WMI and the LLC as of December 31, 1999 included in the Financial Statements, (ii) were incurred after April 30, 2000 in the ordinary course of business consistent with past practice (none of which is materially adverse), or (iii) arise under any contract, commitment or agreement disclosed in the WMI Disclosure Schedule and, in the case of any liability relating to any default, violation or performance at a loss thereunder that could reasonably be expected to have a Material Adverse Effect on WMI or the LLC, are disclosed in the WMI Disclosure Schedule.

(d) WMI has no trading activity.

**SECTION 1.10. *Books and Records.*** WMI has made available to Atmos and Energy, and will continue to make available to Atmos and Energy, all of the books, records and certificates of WMI and the LLC. The books and records of WMI and the LLC fairly reflect in all material respects the transactions to which WMI or the LLC is or was a party or by which any of their respective properties are or were bound, and such books and records are and have been properly kept and maintained in all material respects, with the revenues, expenses, assets and liabilities of WMI and the LLC accurately recorded therein in all material respects.

**SECTION 1.11. *Litigation.*** The WMI Disclosure Schedule contains a list of all material claims, actions, suits, investigations or proceedings pending or, to WMI's Knowledge, threatened against or affecting WMI or the LLC or any of their respective properties or rights at law or in equity before or by any court, arbitrator or administrative, governmental or regulatory authority or body. None of such claims, actions, suits, investigations or proceedings is reasonably expected to have a Material Adverse Effect on WMI or the LLC or to hinder in any material respect or prevent the consummation by WMI of the transactions contemplated by this Agreement and the Ancillary Agreements. Neither WMI, the LLC nor any of their respective properties is subject to any order, writ, judgment, injunction, decree, determination or award reasonably expected to have a Material Adverse Effect on WMI or the LLC.

**SECTION 1.12. *Title to, and Condition of, Assets.*** WMI and the LLC each have good and indefeasible title to, or a valid leasehold interest in, all of its assets and properties, real and personal, including the properties, assets and leasehold interests reflected in the Financial Statements (except for any properties or assets disposed of in the ordinary course of business), necessary or appropriate for the operation of its business, free and clear of all liens, mortgages, pledges, security interests or other encumbrances, except for such liens, mortgages, pledges, security interests or other encumbrances that, if present, would not reasonably be expected to have a Material Adverse Effect on WMI or the LLC (collectively, the "Permitted Encumbrances"). All of the personal property and assets of WMI and the LLC are, in all material respects, in good condition and repair, taken as a whole, ordinary wear and tear excepted, and are adequate and sufficient for the conduct of the business of WMI and the LLC as conducted as of the date hereof.

SECTION 1.13. *Real Property Interests.* Neither WMI nor the LLC has ever owned any real property or, except for leases of office facilities, had any interest in real property. All real property now or heretofore leased by WMI or the LLC was and has been used in compliance, in all material respects, with all Environmental Requirements. No Hazardous Materials were or have been generated, stored, transported, disposed of on site or sent off-site by WMI or the LLC from, in, on, at or upon the premises so leased except materials of a type and used and stored in quantities normally used or stored in connection with the operation of office facilities. Neither WMI nor the LLC has received any written notice asserting any violation of Environmental Requirements or any obligation or liability of WMI or LLC to remediate any condition or pay any costs in respect of remediation or other environmental response.

SECTION 1.14. *Taxes.*

(a) *Tax Returns Filed and Taxes Paid.* All Tax Returns required to be filed by or on behalf of WMI and the LLC have been duly filed (or extensions obtained, as disclosed in the WMI Disclosure Schedule), and such Tax Returns are true, complete and correct in all material respects. All Taxes reflected on such Tax Returns or any subsequent assessments with respect thereto have been paid in full on a timely basis, and no other Taxes that are material in amount, whether individually or in the aggregate, are payable by WMI or the LLC with respect to items or periods covered by such Tax Returns (whether or not shown on or reportable on such Tax Returns) or with respect to any period prior to the date of this Agreement. WMI and the LLC have withheld and paid over all Taxes that are material in amount, whether individually or in the aggregate, required to have been withheld and paid over, and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid to any employee, creditor, independent contractor, or other third party. There are no liens on any of the assets of WMI or the LLC with respect to Taxes, other than liens for Taxes not yet due and payable. Neither WMI nor the LLC does any material business in or derives any material income from any state, local, territorial or foreign taxing jurisdiction other than those for which all Tax Returns required to be filed by WMI or the LLC have been furnished to Atmos and Energy.

(b) *Tax Returns Furnished.* WMI has furnished to Atmos and Energy true, correct and complete copies of (i) income tax audit reports, statements of deficiencies, closing or other material agreements received by the LLC relating to Taxes, and (ii) all federal and state income or franchise Tax Returns for the LLC for all periods ending on and after 1995.

(c) *Tax Deficiencies.* To the Knowledge of WMI, no deficiency for any Taxes that are material in amount, whether individually or in the aggregate, has been proposed, asserted, assessed or threatened against WMI or the LLC that has not been resolved and paid in full. WMI and the LLC are neither a party to any action or proceeding for assessment or collection of Taxes, nor has WMI received written notice that such an event has been asserted or threatened against WMI, the LLC or any of their assets. No waiver or extension of any statute of limitations is in effect with respect to Taxes or Tax Returns of WMI or the LLC.

(d) *Tax Sharing Agreements.* Neither WMI nor the LLC is (nor has either of them ever been) a party to any Tax sharing agreement and have not assumed the Tax liability of any other person under contract.



(e) *Tax Elections and Special Tax Status.* The LLC is not a party to any safe harbor lease within the meaning of Section 168(f)(8) of the Code, as in effect prior to amendment by the Tax Equity and Fiscal Responsibility Act of 1982. From the formation of WMI, all stockholders of WMI have been individuals, and no stockholder of WMI has ever been a person other than a United States person within the meaning of Code Section 7701(a)(30). WMI is not a "foreign person" (as that term is defined in Sections 1445 and 6038A(c)(3) of the Code). The LLC has not entered into any compensatory agreements with respect to the performance of services which payment thereunder would result in a nondeductible expense to the LLC pursuant to Section 280G of the Code or an excise tax to the recipient of such payment pursuant to Section 4999 of the Code. The LLC has not agreed, nor is it required to make, any adjustment under Code Section 481(a) by reason of a change in accounting method or otherwise.

(f) *Tax Status.* From its formation, the LLC has been treated as a partnership for federal tax purposes pursuant to Treasury Regulation Section 301.7701-3. For each taxable year of WMI since its formation, WMI (i) has had a validly existing S corporation election in effect for federal income tax purposes, (ii) has filed all federal Tax Returns as an S corporation, and (iii) has taken no action, and its stockholders have taken no action, that would terminate the S corporation election.

SECTION 1.15. *Employee Benefit Plans.* Except as otherwise set forth in the WMI Disclosure Schedule or as not reasonably expected to have a Material Adverse Effect on WMI or the LLC:

(a) The WMI Disclosure Schedule sets forth (i) the name of each Plan and indicates any Plan that is a "multiemployer plan," as defined in ERISA Section 4001, (ii) the name of any other employee benefit plan as defined in Section 3(3) of ERISA with respect to which WMI, the LLC or any Group Member is a "Party in Interest," as defined in Section 3(14) of ERISA and (iii) the name of any other Employee Benefit Arrangement.

(b) Each Plan is now, and has been from its inception, administered in accordance with its terms and in compliance in all material respects with the provisions of applicable law, including without limitation ERISA and the Code. Each Plan intended to be qualified under Section 401(a) of the Code is so qualified and has been determined to be so qualified by the IRS, and nothing has occurred since the date of the last such determination which resulted or is likely to result in the loss of such qualification. All required reports and descriptions of each Plan have been timely filed and distributed as required by ERISA.

(c) There has not occurred with respect to any Plan any "Prohibited Transaction," as defined in either Section 406 of ERISA or Section 4975 of the Code. With respect to each Plan and Employee Benefit Arrangement and any other similar plan or arrangement either currently or previously terminated, maintained, or contributed to by any current or former Group Member, no event has occurred and no condition exists that after the Closing Date could subject Atmos, WMI or the LLC, directly or indirectly, to any material liability (including liability under any indemnification agreement) under Section 412, 413, 4971, 4975, or 4980B of the Code or Section 302, 502, 515, 601, 606, or Title IV of ERISA.

(d) There has not occurred with respect to any Plan any "Reportable Event," as defined in Section 4043 of ERISA, for which the thirty-day notice requirement has not been waived under applicable PBGC requirements. No Plan has applied for or obtained a waiver from the IRS of any minimum funding requirement under Section 412 of the Code. The funding method used in connection with each ERISA Pension Plan meets the requirements of ERISA and the Code and the actuarial assumptions used in connection with each such plan are reasonable, given the experience of such ERISA Pension Plan and reasonable expectations. The fair market value of the plan assets of each Plan are at least equal to (i) the present value of its benefit liabilities (as defined in ERISA Section 4001(a)(16), including any unpredictable contingent event benefits within the meaning of Code Section 412(l)(7), and determined on the basis of assumptions prescribed by the PBGC for purposes of ERISA Section 4044), and (ii) the Projected Benefit Obligations thereunder, as defined in Statement of Financial Accounting Standards No. 87, including any allowance for indexation and ad hoc increases.

(e) (i) No Plan has been terminated, and no complete or partial withdrawal from or insolvency or reorganization with respect to any "multiemployer plan," as defined in Section 4001 of ERISA, has occurred since the inception of any Plan under circumstances that have given rise to, or would give rise to, any actual or potential liability to the PBGC, or any multiemployer plan, or any other person (excluding liabilities to participants for benefits payable in the normal course of events pursuant to any such termination); (ii) no event or condition exists which presents a risk of termination of any Plan by the PBGC; and (iii) there is no actual or potential liability to the PBGC or any other person (other than any liability for Plan benefits) expected by WMI, the LLC, or any Group Member to be incurred with respect to any Plan, including, but not limited to, any liability for premium payments, for any liability for accumulated funding deficiency as defined in Section 302 of ERISA, or for any minimum funding contribution under Section 302 of ERISA.

(f) No lien imposed under Section 412(n) of the Code exists in favor of any Plan upon any property belonging to a Group Member.

(g) WMI has previously delivered or made available to Atmos and Energy true and correct copies of each Plan and each Employee Benefit Arrangement, together with, if applicable, true and correct copies of the annual reports and actuarial reports filed with respect to each such Plan and Employee Benefit Arrangement for the preceding two plan years, summary plan descriptions and any other communications to employees relating to each such Plan and Employee Benefit Arrangement, documents (including financial statements) relating to any trust or third-party funding vehicle, and all letters and other correspondence to and from the IRS, if any, including but not limited to written confirmation of the tax-exempt status or qualification of any Plan under Section 401(a) of the Code.

(h) Neither (i) WMI, the LLC or any Group Member, or any director, officer, employee or agent of WMI, the LLC or any Group Member has, with respect to any Plan, nor (ii) any Plan or trust created thereunder or trustee or administrator thereof has, engaged in any conduct that would result in any penalties under Section 502 of ERISA or any liability under Section 409 of ERISA. All benefits due under each Plan and Employee Benefit Arrangement have been timely paid, and no civil or criminal action or claim (other than uncontested claims for benefits) is pending or, to the best of WMI's Knowledge, threatened with respect to any Plan.

All contributions and payments to or with respect to each Employee Benefit Arrangement or Plan have been timely made.

(i) Each Plan or Employee Benefit Arrangement maintained by WMI, the LLC or any Group Member specifically provides that it may be terminated at any time by its sponsoring employer (subject, in the case of any Plan which is subject to Title IV of ERISA, to the provisions of Section 4041 of ERISA), and there are no circumstances or conditions that exist prior to Closing that would prevent the applicability of those provisions. Each Plan or Employee Benefit Arrangement can be terminated or amended unilaterally by WMI or the LLC on not more than 90 days notice, and none of WMI, the LLC, or any Group Member or any director, officer or employee of any of the foregoing have taken any action that would commit WMI, the LLC or any Group Member to continue any Plan or Employee Benefit Arrangement or any benefit thereunder for any present or former employee of WMI, the LLC or any Group Member or that would prevent WMI, the LLC or any Group Member from changing or terminating any such benefit or plan.

(j) Neither WMI nor the LLC now have in effect, and neither WMI nor the LLC have previously had in effect, any welfare benefit plan, commitment or arrangement providing for medical or death benefits (whether insured or uninsured) with respect to current or former employees beyond their date of retirement or other termination of service (other than coverage mandated by Section 4980B of the Code and Section 601 of ERISA, the cost of which is fully paid by the former employee or his or her dependents). Except as disclosed in the WMI Disclosure Schedule, no Employee Benefit Arrangement or Plan provides for any severance pay, accelerated payments, *deemed satisfaction of goals or conditions*, new or increased benefits, forgiveness or modification of loans, or vesting conditioned in whole or in part upon a change in control of any Group Member or any plant closing.

(k) Neither WMI, the LLC nor any Group Member maintains, participates in, contributes to, or has any obligation to contribute to any liability with respect to any multiple employer plan, or has had any obligation with respect to such a plan during the six years immediately preceding the date of this Agreement.

SECTION 1.16. *Labor Matters.* None of WMI's or the LLC's employees is covered by any collective bargaining agreement, and there are no employee activities or controversies (including, but not limited to, any labor organizing activities, election petitions or proceedings or proceedings preparatory thereto, unfair labor practice complaints, labor strikes, employment discrimination claims, disputes, slowdowns or work stoppages) pending or, to WMI's Knowledge, threatened, between WMI or the LLC and any of their respective employees.

SECTION 1.17. *Transactions with Affiliates, Directors, Officers and Employees.* The WMI Disclosure Schedule contains a list and description of all agreements, arrangements, commitments or other transactions between WMI or the LLC and any controlling Affiliates of WMI currently in effect or entered into at any time within the three years prior to the date of this Agreement. The WMI Disclosure Schedule contains a list and description of all agreements, arrangements, commitments or other transactions between WMI or the LLC and any of their respective directors, officers, managers or employees (other than managers appointed by Energy)

currently in effect or entered into at any time within the three years prior to the date of this Agreement, the terms of which are not generally available or applicable to employees as a group.

SECTION 1.18. *Insurance.* WMI has listed in the WMI Disclosure Schedule all insurance policies or binders maintained by the LLC with respect to its properties and business, and the LLC is not in default with respect to any provision contained in any such policy or binder or has not failed to give any material notice or present any material claim under any such policy or binder in due and timely fashion. There are no outstanding unpaid claims under any such policy or binder, and the LLC has not received any written notice of any material claim against the LLC that is not fully covered by the listed insurance policies (subject to the deductibles and other terms and provisions thereof). The LLC has not received written notice of cancellation or nonrenewal of any such policy or binder, and the consummation of the Merger will not result in the automatic termination of any of such policies or binders or give the insurance carrier any right to terminate any such policy or binder. WMI does not maintain any insurance policies, nor is it covered by any insurance policies or binders of the LLC.

SECTION 1.19. *Absence of Unethical Business Practices.* Neither WMI, the LLC nor, to the best of WMI's Knowledge, any manager of the LLC designated by WMI, or any director, officer, employee or Affiliate of WMI or the LLC (excluding Atmos, Energy or any manager designated by Energy), has directly or indirectly given or agreed to give any gift or similar benefit to any customer, subcontractor, supplier, government employee, or other person who was or is in a possible position to help or hinder WMI or the LLC, which gift or benefit (a) would reasonably be expected to subject WMI or the LLC to any damages or penalties in any civil or criminal proceeding, or (b) would reasonably be expected to have had, singly or in the aggregate, a Material Adverse Effect on WMI or the LLC if not given or continued.

SECTION 1.20. *Brokers and Finders.* No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of WMI, the LLC, Woodward or Kifer.

SECTION 1.21. *Limitation on Trading Position.* The Net Position of WMI and the LLC does not exceed 2,500,000 MMBTUs. The WMI Disclosure Schedule contains a complete list of all open New York Mercantile Exchange commodity future, option or swap contracts or other gas purchase or gas sales contracts to which WMI or the LLC is a party as of the date hereof, the quantity of natural gas (in MMBTUs) which each contract represents, the current value, in dollars, of each contract, the exercise or strike date of each such contract and the approximate current value (positive or negative) of each contract. On the Closing Date, WMI shall provide Atmos with a revised WMI Disclosure Schedule that will indicate the then current information with respect to such contracts. All such contracts have been incurred in the normal course of business consistent with the amended risk policy of the LLC, copies of which have been distributed to the board of managers of the LLC.

**ARTICLE II.**  
**CERTAIN REPRESENTATIONS AND**  
**WARRANTIES OF WMI, WOODWARD AND KIFER**

WMI and each of Woodward and Kifer, severally (and not jointly), hereby represent and warrant to Atmos and Energy (as to itself or himself, and not the others) that the statements set forth in this Article II are true, correct and complete, except as set forth in the WMI Disclosure Schedule.

**SECTION 2.1. *Understanding that Shares will Be Issued without Registration.*** WMI, Woodward and Kifer understand that the shares of Common Stock to be issued pursuant to this Agreement (the "Shares") will be issued without registration under the Securities Act, in reliance upon exemptions from registration under the Securities Act including the safe harbor provided by Regulation D promulgated under Section 4(2) of the Securities Act. WMI, Woodward and Kifer further understand that such exemptions depend in part upon, and such shares will be issued in reliance on, the representations and warranties made by WMI, Woodward and Kifer in this Article II.

(a) ***Investment Intent.*** WMI, Woodward and Kifer will acquire the Shares for their own respective accounts for investment purposes only and not with a view to resale or other distribution thereof, in whole or in part; provided, however, that, subject to the terms hereof, the disposition of WMIs, Woodward's and Kifer's property shall at all times be within their control; and WMI, Woodward and Kifer will not assign, sell, hypothecate or otherwise transfer the Shares unless (i)(a) a registration statement is in effect under the Securities Act with respect to such Shares or (b) a written opinion of counsel acceptable to Atmos is obtained to the effect that no such registration is required (except for the transfers from WMI to Woodward and Kifer in the liquidation of WMI), and (ii) they have complied with all applicable holding periods imposed by the Securities Act (and the regulations thereunder) and this Agreement. Woodward and Kifer have no reason to anticipate any change in their personal circumstances, financial or otherwise, that would cause or require any sale or distribution of the Shares in violation of this Section 2.1(a).

(b) ***Investor Awareness.*** WMI, Woodward and Kifer acknowledge, agree and are aware that: (i) no United States federal or state or any foreign agency has passed upon the accuracy, validity or completeness of this Agreement or made any finding or determination as to the fairness of an investment in the Shares; (ii) pursuant to the terms of this Agreement, there are substantial restrictions on the transferability of the Shares; (iii) the Shares have not been registered under the Securities Act or under the securities laws of any other jurisdiction; (iv) an offer or sale of any of the Shares by WMI, Woodward or Kifer in the absence of registration under the Securities Act will require the availability of an exemption thereunder; and (v) a restrictive legend is or shall be placed on the certificates representing the Shares and a notation shall be made in the appropriate records of Atmos indicating that the Shares are subject to restrictions on transfer.

**SECTION 2.2. *Accredited Investor.*** WMI qualifies as an "accredited investor" within the meaning of Rule 501 under the Securities Act, because it has total assets exceeding \$5,000,000. J.D. Woodward, III, and James Kifer each qualify as an "accredited investor" within

the meaning of Rule 501 under the Securities Act, because either (i) each has an individual net worth, or a joint net worth with their respective spouses, exceeding \$1,000,000; or (ii) each had an individual income in excess of \$200,000 in each of the two years immediately preceding the date hereof, or each had joint income with their respective spouses in excess of \$300,000 in each of those years, and each of J.D. Woodward and James Kifer has a reasonable expectation of reaching the same income level in the current year.

SECTION 2.3. *Receipt of Information; Access to Information.* WMI, Woodward and Kifer each acknowledge that they:

(a) have been furnished with the Articles of Incorporation and Bylaws of Atmos, the Atmos SEC Reports and any documents that may have been made available upon its or his request (collectively, the "Other Documents"), and are capable of understanding and evaluating the risks of acquiring the Shares;

(b) have been given the opportunity to ask questions of, and receive answers from, Atmos and its officers and employees concerning the terms and conditions of the acquisition of the Shares and other matters pertaining to an investment in the Shares, have been given the opportunity to obtain such additional information necessary to evaluate the merits and risks of acquiring the Shares to the extent Atmos possesses such information, and have received all documents and information that each of them has requested relating to an investment in the Shares;

(c) have not relied upon any representations or other information (whether oral or written) from Atmos or its directors, officers or affiliates, or from any other persons, other than the representations of Atmos made in this Agreement and the Other Documents;

(d) are familiar with the nature of and risks attendant to investments in the business of Atmos and securities in general and have carefully considered and have, to the extent each of them believes such discussion necessary, discussed with their respective professional legal, financial and tax advisers the suitability of an investment in the Shares for their respective financial and tax situations and have determined that the Shares are a suitable investment for each of them; and

(e) have made, and are solely responsible for making, their respective own independent evaluations of the economic and other risks involved in their respective investments in the Shares and their own respective independent decisions to make such investments.

SECTION 2.4. *WMI Stockholders.* Woodward and Kifer are the only beneficial and record stockholders of WMI, and no other Person owns or has the right to acquire any shares of capital stock of WMI.

SECTION 2.5. *Authority Relative to this Agreement.* Woodward and Kifer have all requisite legal right, power and authority to execute and deliver this Agreement and the Ancillary Agreements to which they are signatories and to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been, and the Ancillary Agreements to which they are signatories will be, duly and validly executed and delivered by Woodward and Kifer and, assuming that this Agreement

constitutes, and the Ancillary Agreements to which they are signatories will constitute when signed, the legal, valid and binding obligations of the other parties hereto and thereto, each such agreement constitutes or will constitute the legal, valid and binding obligation of Woodward and Kifer, as the case may be, enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws (including court decisions) and doctrines affecting the rights of creditors generally and general equitable principles.

SECTION 2.6. *No Conflicts.* Except as set forth in the WMI Disclosure Schedule, the execution, delivery and performance of this Agreement and the Ancillary Agreements to which they are signatories by Woodward and Kifer and the consummation by Woodward and Kifer of the transactions contemplated hereby and thereby do not and will not conflict with or constitute a breach or violation of or a default under, any contract, indenture, mortgage, loan agreement, note or other instrument to which Woodward or Kifer is a party or by which either of them is or may be bound or to which any shares of WMI Stock held by either of them are subject, nor will such action result in any breach or violation of, or default under, any applicable law, administrative regulation or administrative or court decree.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE ATMOS ENTITIES**

The Atmos Entities, jointly and severally, hereby represent and warrant to WMI, Woodward and Kifer that the statements set forth in this Article III are true, correct and complete, except as set forth in the Atmos Disclosure Schedule attached hereto as Exhibit B.

SECTION 3.1. *Organization and Qualification.* Atmos is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and the Commonwealth of Virginia. Energy is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of the Atmos Entities has all requisite corporate or limited liability company power and authority and possesses all Governmental Authorizations necessary to own, lease and operate its properties and assets and to carry on its business as it is presently conducted, except where the failure to have any of such Governmental Authorizations would not have a Material Adverse Effect on Atmos and its Subsidiaries taken as a whole. Each of the Atmos Entities is duly qualified as a foreign corporation or foreign limited liability company, respectively, to do business and is in good standing in each jurisdiction in which the character of the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify would not have a Material Adverse Effect on Atmos and its Subsidiaries taken as a whole. Atmos has heretofore delivered or made available to WMI true and complete copies of the Articles of Incorporation and Bylaws of Atmos and the organizational documents of Energy, including all amendments thereto.

#### **SECTION 3.2. *Capitalization.***

(a) The entire authorized capital stock of Atmos consists of 100,000,000 shares of Common Stock. As of August 4, 2000, (i) 31,794,899 shares of Common Stock were issued and

outstanding, all of which are duly authorized, validly issued, fully paid and nonassessable and free of statutory preemptive rights, and (ii) no shares of Common Stock are held in the treasury of Atmos. No such shares were issued in violation of any contractual or statutory preemptive rights. As of the date hereof, other than options granted by Atmos under its 1998 Long-Term Incentive Plan and the Long-Term Stock Plan for the United Cities Gas Company Division and stock units under its Equity Incentive and Deferred Compensation Plan for Non-Employee Directors or as described in the Atmos SEC Reports, there are no options, warrants or other rights, agreements, arrangements or commitments of any character relating to the capital stock of Atmos or obligating Atmos to issue or sell any shares of capital stock of, or any securities convertible into or evidencing the right to purchase any shares of capital stock of or other equity interests in, Atmos. There are no obligations, contingent or otherwise, of Atmos to repurchase, redeem or otherwise acquire any shares of Common Stock.

(b) All of the issued and outstanding member interests of Energy are duly authorized, validly issued, fully paid and nonassessable and owned by Atmos.

(c) When issued, the Shares will be duly authorized, validly issued, fully paid, nonassessable and free of any preemptive rights.

SECTION 3.3. *Authority Relative to This Agreement.* Each of the Atmos Entities has all requisite corporate or limited liability company power and authority to execute and deliver this Agreement and the Ancillary Agreements to which they are signatories and to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which they are signatories have been duly and validly authorized by the board of directors of Atmos and by the managers of Energy, and no other proceedings on the part of the Atmos Entities are necessary to authorize this Agreement or the Ancillary Agreements to which they are signatories or to consummate the transactions contemplated herein and therein. This Agreement has been, and the Ancillary Agreements to which they are signatories will be, duly and validly executed and delivered by the Atmos Entities and, assuming that this Agreement constitutes, and the Ancillary Agreements will constitute when signed, the legal, valid and binding obligations of the other parties hereto and thereto, each such agreement constitutes or will constitute the legal, valid and binding obligation of the Atmos Entities, as the case may be, enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws (including court decisions) and doctrines affecting the rights of creditors generally and general equitable principles.

SECTION 3.4. *No Conflict.* The issuance by Atmos of the Shares, the execution, delivery and performance of this Agreement and the Ancillary Agreements to which they are signatories by the Atmos Entities, and the consummation by the Atmos Entities of the transactions contemplated hereby and thereby do not and will not conflict with or constitute a breach or violation of, or a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Atmos Entities pursuant to, any contract, indenture, mortgage, loan agreement, note, license, franchise, permit, lease or other instrument to which the Atmos Entities is a party or by which it is or may be bound or to which any of its property or assets is subject, nor will such action result in any breach or violation of, or



default under, the provisions of the Articles of Incorporation or Bylaws of Atmos or the organizational documents of Energy or of any applicable law, administrative regulation or administrative or court decree.

**SECTION 3.5. *Required Filings and Consents.*** No authorization, approval or consent of, or registration or filing with, any Person is required for the issuance of the Shares by Atmos, the execution, delivery or performance by the Atmos Entities of this Agreement or the Ancillary Agreements to which the Atmos Entities are signatories or the consummation by the Atmos Entities of the transactions contemplated herein and therein, except (i) the applicable requirements of federal and state securities laws, (ii) the filing requirements under the Hart-Scott-Rodino Act, and (iii) the approvals of the Colorado Public Utilities Commission, Georgia Public Service Commission, Kentucky Public Service Commission, Illinois Corporation Commission, Tennessee Regulatory Authority, and the Virginia Corporation Commission.

**SECTION 3.6. *SEC Filings; Financial Statements, Absence of Undisclosed Liabilities.***

(a) Atmos has filed all forms, reports and documents required to be filed with the SEC since September 30, 1998, and has heretofore delivered or made available to WMI, Woodward and Kifer, in the form filed with the SEC, (i) its Annual Reports on Form 10-K for the fiscal years ended September 30, 1998 and 1999, (ii) its Quarterly Reports on Form 10-Q for the periods ended December 31, 1999 and March 31, 2000, and (iii) all proxy statements relating to Atmos' meetings of shareholders (whether annual or special) held since September 30, 1999, (iv) all Forms 8-K filed by Atmos with the SEC since September 30, 1999, (v) all other reports or registration statements filed by Atmos with the SEC since September 30, 1999, and (vi) all amendments and supplements to all such reports and registration statements filed by Atmos with the SEC since September 30, 1999 (collectively, the "Atmos SEC Reports"). The Atmos SEC Reports were prepared in substantial compliance, in all material respects, with the requirements of the Securities Act or the Exchange Act, as the case may be, and did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) Atmos has heretofore delivered or made available to WMI, Woodward and Kifer, its audited consolidated financial statements of Atmos and its subsidiaries (together with the notes thereto) for its fiscal years ended September 30, 1998 and 1999 and its unaudited consolidated financial statements for the period ended March 31, 2000. All such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby (subject, in the case of any such financial statements that are unaudited, to year-end adjustments in such amount and of such type as are or will be consistent with adjustments made in prior fiscal years). Such financial statements (together with the notes thereto) fairly, in all material respects, present the financial condition and results of operations and cash flows of Atmos and its Subsidiaries on a consolidated basis at the dates and for the periods set forth therein.

(c) Since September 30, 1999, there has been no Material Adverse Effect on Atmos or its subsidiaries, taken as a whole, whether or not arising in the ordinary course of business.

(d) Neither Atmos nor its Subsidiaries have any material liabilities (whether accrued, absolute or contingent) whether individually or in the aggregate, except for liabilities that (i) are accrued or reserved against in the consolidated balance sheet of Atmos and its Subsidiaries, as at September 30, 1999 or reflected in the notes thereto, or are not required by generally accepted accounting principles to be so accrued, reserved or reflected, (ii) were incurred after the date of such balance sheet, (iii) were disclosed in the Atmos SEC Reports.

**SECTION 3.7. *Brokers and Finders.*** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Atmos Entities.

**SECTION 3.8. *Litigation.*** Except as described in the Atmos SEC Reports, there are no claims, actions, suits, investigations or proceedings pending or, to Atmos' Knowledge, threatened against Atmos or any of its Subsidiaries or any of their respective properties or rights at law or in equity before or by any court, arbitrator or administrative, governmental or regulatory authority or body that are reasonably expected to have a Material Adverse Effect on Atmos and its Subsidiaries, taken as a whole, or to hinder in any material respect or prevent the consummation by the Atmos Entities of the transactions contemplated by this Agreement and the Ancillary Agreements.

#### **ARTICLE IV.**

#### **AGREEMENTS AND COVENANTS REGARDING WMI AND THE LLC**

**SECTION 4.1. *Conduct of Business by WMI Pending the Closing.*** Except for the distributions to Woodward and Kifer of certain assets other than the LLC Membership Interests and shares of Common Stock as disclosed in the WMI Disclosure Schedule and contemplated by Section 7.2, between the date of this Agreement and the Closing Date, unless Atmos and Energy shall otherwise agree in writing, WMI shall, and shall cause the LLC to, conduct its business only in the ordinary course and in a manner consistent with past practice; and WMI shall maintain the corporate existence of WMI and the limited liability company existence of the LLC, preserve intact the business and organization of WMI and the LLC, keep available the services of its present officers, employees and consultants, and preserve the relationships and goodwill of WMI and the LLC with its customers, suppliers and other persons with which WMI or the LLC has significant business relations. By way of amplification, but not limitation, except for the distributions to Woodward and Kifer of all its assets other than the LLC Membership Interests and 345,500 shares of Common Stock and distributions contemplated by Section 7.2, WMI shall not, and shall cause the LLC not to, between the date of this Agreement and the Closing Date, directly or indirectly, do any of the following without the prior written consent of Atmos and Energy or, in the case of the LLC, the approval of a Super-Majority in Interest (as defined in the LLC Agreements) (as to which approval neither Atmos nor Energy shall have any obligation):

(a) amend or otherwise change its Articles of Incorporation or Bylaws or LLC Documents;

(b) issue, sell, pledge, dispose of or encumber, or authorize the issuance, sale, pledge, disposition or encumbrance of (i) any shares of capital stock of any class, or any options,

warrants, convertible securities or other rights of any kind to acquire any shares of capital stock of, or any other equity interest in, WMI (except in accordance with the WMI Shareholders' Agreement) or the LLC or (ii) any assets of WMI or the LLC (except for sales of assets in the ordinary course of business and in a manner consistent with past practice);

(c) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock or other equity interest;

(d) distribute, pay out or set aside any of its cash or assets;

(e) reclassify, combine, split, subdivide, redeem, purchase or otherwise acquire or offer to acquire, directly or indirectly, any of its capital stock or other equity interests;

(f) acquire (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division thereof or acquire any shares of WMI Stock or other equity interests except pursuant to the WMI Shareholders' Agreement;

(g) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person, or make any loans or advances, except, in the case of the LLC, in the ordinary course of business consistent with past practice or the Bank of America Facility;

(h) enter into or amend any contract, agreement, commitment or arrangement other than in the ordinary course of business consistent with past practice;

(i) authorize any capital expenditures that are in excess of \$150,000 in the aggregate during a calendar year, plus up to \$450,000 for compressors and related equipment;

(j) increase the compensation payable or to become payable to its managers, directors, officers or employees, except for increases in salary or wages of non-officer employees in accordance with past practices, or grant any severance or termination pay or stock options to, or enter into any employment or severance agreement with any manager, director, officer or other employee, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any current or former managers, directors, officers or employees, except as required by contract disclosed in the WMI Disclosure Schedule or by law, and except for the termination of consulting and other agreements with former directors of WMI;

(k) make any loan or advance (except for normal business expense advances) to any of its managers, directors, officers, employees or stockholders, or to any other person or entity or cancel without payment in full any note, loan or other obligation receivable from any manager, director, officer, employee or stockholder or any member of their families or from any corporation or other entity in which any manager, director, officer, employee or stockholder or any member of their families has any direct or indirect interest known to Woodward or Kifer;

(l) take any action other than in the ordinary course of business and in a manner consistent with past practice (none of which actions shall be unreasonable or unusual) with

respect to accounting policies or procedures and the filing of Tax Returns (including procedures with respect to the payment of accounts payable and collection of accounts receivable);

(m) make any tax election or settle or compromise any material federal, state, local or foreign income tax liability or settle, waive or compromise any other material claim, including litigation;

(n) pay, discharge or satisfy any material claims, liabilities or obligations (absolute, accrued, asserted or asserted contingent or otherwise), other than as may be paid, discharged or satisfied in the ordinary course of business and consistent with past practice;

(o) take any action or omit to take any necessary action, which action or omission results in any breach of or constitutes a default (or an event that with notice or lapse of time or both would become a default) under any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which it is a party or by which it or its properties is bound or affected and is reasonably expected to have a Material Adverse Effect on WMI or the LLC; or

(p) permit the Net Position of WMI and the LLC to exceed 2,500,000 MMBTUs of natural gas.

SECTION 4.2. *No Solicitation of Transactions.* WMI will not, and will not authorize or permit the LLC or any manager, director, officer, employee or agent of WMI or the LLC to:

(a) solicit, initiate or encourage the submission of proposals or offers from any person or entity (other than Atmos, Energy or an Affiliate of Atmos) relating to,

(b) participate (except with Atmos) in any negotiations regarding, or furnish to any person any information with respect to WMI or the LLC for the purposes of, or

(c) cooperate with, assist or participate in, facilitate or encourage (except, in each case, with Atmos) any effort or attempt by any person to seek or effect,

any merger or other business combination involving WMI or the LLC or the purchase of all or a substantial portion of WMI's or the LLC's assets or any equity interest in WMI or the LLC. WMI and Atmos will each promptly notify the other if any such proposal or offer, or any inquiry by, or contact with any person with respect thereto, is made.

SECTION 4.3. *Access to Information; Confidentiality.* (a) From the date hereof to the Closing Date, WMI will, and will direct the LLC and the managers of the LLC designated by WMI, directors, officers, employees and agents of WMI and the LLC to, permit and afford Atmos, Energy and their respective representatives full and complete access at all reasonable times and with reasonable prior notice to the employees, offices, properties, books and records of WMI and the LLC, including the work papers of its certified public accountants and Tax Returns of WMI, for a due diligence review and will furnish Atmos and Energy with all Tax Returns, financial, operating and other data and information of WMI or the LLC as Atmos or Energy, through its officers, managers, employees or representatives, may reasonably request. In addition, WMI will permit Atmos and Energy to perform other inspections and tests (including

leak surveys) of WMI's and the LLC's physical properties as Atmos or Energy may, in its sole discretion and at its sole expense, elect to perform. Further, WMI understands and agrees that Atmos, Energy or their respective employees, agents and representatives may find it appropriate to contact Governmental Bodies in connection with their analyses of certain environmental information concerning WMI or the LLC, and WMI hereby consents to such contact.

(b) WMI, Woodward and Kifer acknowledge that they may receive or have received from Atmos and Energy information and data regarding Atmos and Energy that is non-public and proprietary in nature. WMI, Woodward and Kifer shall hold in confidence all such information and data and shall ensure that its directors, officers, employees and agents do not disclose such information and data to others without the prior written consent of Atmos or Energy, as the case may be. In the event that this Agreement is terminated, upon receipt of a written request, WMI, Woodward and Kifer will return to Atmos and Energy all such documents and other material (and all copies thereof) obtained from Atmos and Energy, respectively, in connection with the transactions contemplated hereby and will destroy all such documents and other material prepared by WMI, Woodward or Kifer or their agents, representatives or advisors that reflect non-public information received by WMI, Woodward or Kifer in connection with the transactions contemplated hereby.

SECTION 4.4. *Insurance.* Through the Closing Date, WMI shall cause the LLC to maintain in full force and effect all of its policies of insurance that were in effect on the date hereof or insurance comparable to the coverage afforded by such policies.

SECTION 4.5. *Preparation of Tax Returns and Payment of Taxes.* (a) WMI shall prepare and timely file at its expense, and cause the LLC to prepare and timely file at the LLC's expense, all Tax Returns and amendments thereto required to be filed by WMI or the LLC on or before the Closing Date. WMI and the LLC shall each pay and discharge all Taxes, assessments and governmental charges upon or against it or any of its properties or assets, and all liabilities at any time existing, before the same shall become delinquent and before penalties accrue thereon, except to the extent and as long as the same are being contested in good faith and by appropriate proceedings pursued diligently and in such a manner as not to cause any Material Adverse Effect on WMI or the LLC.

(b) Atmos shall prepare and timely file at its expense, or cause to be prepared and timely filed, when due, all Tax Returns and amendments thereto required to be filed by the LLC for any Tax periods ending after the Closing Date (including all Tax periods that begin before and end after the Closing Date). Woodward and Kifer shall have a reasonable opportunity to review and comment on all such Tax Returns and amendments thereto to the extent such Tax Returns cover tax periods that begin before the Closing Date.

SECTION 4.6. *Certain Tax Covenants.* Prior to the Closing Date, WMI shall not, and shall cause the LLC not to, take any of the following actions:

- (a) make, revoke or amend any Tax election;
- (b) execute any waiver of restrictions on assessment or collection of any Tax; or
- (c) enter into or amend any agreement or settlement with any Tax Agency.